
ISSUE I

May a judge lease office space to a lawyer who is likely to appear before the judge?

ANSWER

No.

ISSUE II

May a judge share a common employee with a lawyer who is likely to appear before the judge?

ANSWER

No.

FACTS

A judge plans to rent the judge's former law office space to a lawyer who is likely to appear before that judge. The judge will not be transferring the judge's law practice to the lawyer. The judge will retain ownership of the entire building and use part of the building to store the judge's personal files and possessions.

While in office the judge plans to share the services of an employee with the lawyer. The employee will be a legal secretary for the lawyer on a part-time basis. The employee will also work part-time for the judge. The shared employee's duties will be performed out of one office but will not include any judicially related duties. The employee will be the judge's legal secretary for as long as it takes to conclude the judge's solo law practice. Moreover, the employee will work for the judge as a property manager for the building, which includes the rental of the office space in the building to the lawyer. The employee will continue as a property manager for the judge after the judge's law practice is concluded and the employee's services as a legal secretary for the judge are no longer needed.

DISCUSSION

Issue I: May a judge lease office space to a lawyer who is likely to appear before that judge?

The Committee concludes that the issue presented involves the provisions of SCR 60.02, 60.03(1), 60.05(1), and 60.05(4)(a)1.b.

A. SCR 60.02 states:

A judge shall uphold the integrity and independence of the judiciary.

This Rule also provides:

A judge should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.

B. SCR 60.03 states:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Subsection (1) of this Rule provides:

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

C. SCR 60.05 states:

A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

Subsection (1) of this Rule provides:

A judge shall conduct all of the judge's extra-judicial activities so that they do none of the following:

(a) Cast reasonable doubt on the judge's capacity to act impartially as a judge.

D. SCR 60.05(4)(a)1.b states:

(a) 1. A judge may not engage in financial or business dealings that could meet any of the following conditions:

. . .

b. Involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

Opinion 97-4 of the Judicial Conduct Advisory Committee, issued September 18, 1997, dealt with a situation almost identical to that in the present opinion. Opinion 97-4 concluded that a

lease agreement between a judge and a lawyer likely to come before the court on which the judge serves violated SCR 60.05(4)(a)2 because it constituted a continuing business relationship.

Opinion 97-4 also concluded that a lease agreement between a judge and a lawyer likely to come before the court on which the judge serves involves the provisions of SCR 60.02 and 60.03(1) because of the appearance of impropriety. A continuing business relationship between a judge and a lawyer may raise doubts in the public mind as to the extent to which this relationship may affect the judge's ability to be fair and impartial.

Although in Opinion 97-4 the judge was also selling the judge's law practice to the tenant lawyer, this difference in the facts does not change the issue or the conclusion of this opinion. The landlord-tenant relationship is a continuing business relationship, whether or not the sale of the law practice is part of the lease agreement. Since it is a continuing business relationship as in Opinion 97-4, it is prohibited by the Code of Judicial Conduct.

Issue II: May a judge share a common employee with a lawyer who is likely to appear before the judge?

The Committee concludes that the issue presented involves provisions of SCR 60.02, 60.03(2), and 60.05(4)(a)1.b.

A. SCR 60.02 states in part:

A judge should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.

B. SCR 60.03(2) states in part:

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

. . . .

(2) A judge may not allow . . . other relationships to influence the judge's judicial conduct or judgment. A judge may not . . . convey or permit others to convey the impression that they are in a special position to influence the judge.

These two sections of the Code of Judicial Conduct set the standards for integrity and impartiality of the judiciary. The public expects a high standard of conduct on the part of judges. A judge must be careful that the judge's behavior, on or off the bench, does not undermine public confidence in the integrity and impartiality of the judiciary. In particular, a judge must avoid any situation which could convey the impression that certain persons have preferential access to the judge, and might as a consequence be able to influence the judge's opinions. Sharing an employee with a lawyer may therefore raise a question in the public mind of whether the judge can remain impartial in cases in which that lawyer represents one of the parties.

C. SCR 60.05(4)(a)1.b states:

(a) 1. A judge may not engage in financial or business dealings that could meet any of the following conditions:

. . . .

b. Involve the judge in frequent transactions or continuing business relationships with those lawyers . . . likely to come before the court on which the judge serves.

The Comment to this Rule notes that this Rule is necessary to avoid creating an appearance of exploitation of office or favoritism, and to minimize the potential for recusal or disqualification.

The sharing of an employee, even after the judge's law practice has been concluded, clearly would involve the judge in a continuing business relationship with the lawyer. That the common employee plans to keep the judge's and the lawyer's businesses separate is irrelevant. The employee will collect rent from the lawyer and act as the agent of the judge as property manager when dealing with the lawyer about the office rental. Moreover, the judge and lawyer may have to confer and work together on employee-related issues, such as determining how much of the employee's time is devoted to each employer, raises in pay, vacation time, or benefits. The result is that this is a continuing business relationship, and thus is not allowed by SCR 65.05(4)(a)1.b.

CONCLUSION

The Committee concludes that a judge may neither lease office space to nor share a common employee with a lawyer likely to appear before the judge. Such arrangements constitute a continuing business relationship, and are not only prohibited by SCR 60.05(4)(a)1.b, but also by several other provisions of the Code of Judicial Conduct designed to preserve the integrity and independence of the judiciary.

APPLICABILITY

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60—Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 02-2 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 15th day of March 2003.

Thomas H. Barland
Chair